

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRISONERS' LEGAL SERVICES
OF NEW YORK, et al.

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.

Defendants.

Case No. 25 Civ. _____

DECLARATION OF OSVALDO HODGE VALDEZ

I, Osvaldo Hodge Valdez, declare as follows:

1. My name is Osvaldo Hodge Valdez. Since September 10, 2021, I have been detained at the Buffalo Federal Detention Facility ("BFDF") run by United States Immigration and Customs Enforcement ("ICE"). I am providing this declaration to describe changes to BFDF's legal mail policy and how these changes have interfered with my ability to communicate with my lawyers through written documents.

2. Since I have been detained, I have been represented by lawyers from Prisoners' Legal Services of New York.

3. Before November 13, 2023, my lawyers and I communicated in writing through legal mail. Less frequently, my lawyers visited me in-person at BFDF, and when they did so they often brought legal documents to give to me.

4. During this time, BFDF's legal mail policy did not prevent these written communications. For example, when I received legal mail, it was opened by an ICE officer in my presence and given to me directly. Each day, an ICE officer brought my unit's legal mail to

the unit. If I had received legal mail, the ICE officer would open my legal mail in front of me, take the papers out of their envelope, check that there was nothing but papers inside, and then give me the envelope and papers. For mail I sent out of BFDF, I am not aware of any review by ICE officers. In both cases, the ICE officers did not make or keep copies, and did not have access to my opened legal mail outside of my presence.

5. For in-person visits, my lawyers were able to bring legal documents to me, and ICE officers did not review these documents, take these documents outside of my presence, copy these documents, or otherwise have access to these legal documents outside of my presence.

6. Beginning in about November 2023, BFDF changed this policy. BFDF posted a notice that said all legal mail would be opened by an ICE officer, copied, and the original would be kept by BFDF in the individual's property bin.

7. Under this policy, BFDF has used different approaches for outgoing mail and incoming mail. For outgoing mail, legal mail is collected by an ICE officer in our unit and taken away. We never receive confirmation that the legal mail has been sent out. The BFDF notice said *all* legal mail would be opened and copied in front of the detained individual, but I do not know if or how this is implemented for outgoing legal mail. We are not present for any opening, copying, or placement of outgoing mail in our property bins.

8. For incoming mail, under the revised policy ICE officers no longer bring legal mail to my unit. Instead, when members of my unit receive legal mail, we are called down to a mail processing area separate from our cell block. If many people in my unit are called, we wait in a larger room outside the smaller mail processing room until we are called in. ICE officers call groups of up to fifteen people into the processing room and process each person's mail one-by-one in front of the others in the group.

9. When it is my turn, the ICE officer opens my mail in front of me and shows it to me. We are not allowed to physically hold or check our mail, and are just given a quick look at the contents.

10. The ICE officer then makes a copy with a copy machine in the room, and gives me the copy. After the ICE officer gives me a copy of the mail, the ICE officer asks that I sign a logbook.

11. The ICE officer also puts the original documents back into their original envelope. On one occasion, the ICE officer closed my original envelope with a piece of scotch tape and asked me to write my initials on the piece of tape. On the several other occasions when I received legal mail, the ICE officer did not tape my original envelope shut or ask me to initial any tape.

12. My original incoming legal mail remains in the ICE officer's control at all times, and I am never given access to it. ICE officers tell us that these originals are kept in our property bins. On one occasion, I asked an ICE officer to take me to my bin to see that my original legal mail would be placed there. The officer took me to my property bin and said that he would place it inside, but I was not allowed to see him actually place the mail there. I do not know who has access to my bin or how it is accessed outside of my presence.

13. As far as I am aware, this inspection process is applied to everyone detained at BFDF.

14. Since November 2023, I have seen ICE officers read the contents of someone's legal mail during their copying of that mail. This has happened over a dozen times.

15. From around March 2024 until November 2024, the ICE officers at BFDF paused the policy of processing our legal mail in this way. ICE officers still called units for legal mail

processing, but instead of copying and keeping our original legal mail, they ran our mail through a drug scanner. After the original mail was processed, we were allowed to keep the originals, and ICE did not have access to opened legal mail outside of our presence.

16. In November 2024, BFDF lifted this pause, and our legal mail is again processed the way it was from November 2023 to around March 2024.

17. Beginning in November 2024, BFDF also started inspecting, copying, and keeping original documents brought to BFDF by lawyers visiting people detained at BFDF. Before BFDF changed the policy, lawyers were able to give detained people like me documents during our in-person visits in the small visitation rooms at BFDF without the documents being inspected and copied by ICE officers.

18. Since November 2024, the BFDF policy is to take and copy legal documents brought by a lawyer during an in-person visit. I have not yet experienced application of this broader policy, but I understand on information and belief that under this policy, an individual's lawyer is asked to put the legal documents in an envelope, and the ICE officer takes the envelope out of our visitation room to make copies. The copy machine is located in another wing of the BFDF facility about five to ten minutes away from the visitation rooms. We are not allowed to follow the ICE officer or see the officer opening and making copies of our legal documents. We do not know how the ICE officer handles documents when they are taken for copying, whether an ICE officer reads the documents as they sometimes do when processing incoming legal mail, or if others are able to see and read the documents. Like with mailed legal documents, the ICE officers only gives the recipient a copy of the legal documents brought by their lawyer and they keep the original in our property bins.

19. My legal documents contain sensitive and confidential information, and I do not trust that ICE officers will refrain from reading and accessing my confidential documents outside of my presence or when copying my confidential documents.

20. I fear that my legal mail could be read by ICE officers under BFDF's policy, and during the periods where ICE officers enforce this policy, I have asked that my lawyer no longer mail or bring documents to me at BFDF. I have also stopped sending legal mail to my lawyers for the same reasons, but ICE officers have still applied the policy to legal mail sent to me by the Board of Immigration Appeals. It is difficult to communicate confidential information to my lawyer without written documents, but under BFDF's policy I cannot communicate confidential information in writing and trust that it will remain confidential.

21. As of the date of this declaration, I understand BFDF is still applying this policy to legal documents that are mailed to and from BFDF or brought by a lawyer to BFDF.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day in February, 2025, in Batavia, New York


Osvaldo Hodge Valdez